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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,996	01/15/2002	Robert A. Baker	115716-00116	1875

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EXAMINER

ENGLISH, PETER C

ART UNIT PAPER NUMBER

3616

DATE MAILED: 09/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/044,996

Applicant(s)

BAKER ET AL.

Examiner

Peter C. English

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to because:

In Fig. 3, "40" should be "90". See page 13, line 1.

Figs. 5 and 7 should include reference number 75. See page 10, line 17.

In Fig. 11, "10" should be "10'";

In Figs. 14 and 15, the notched segment 132 should be represented by dashed lines since it is located on the inside of the air bag. Further, the lead line for reference number 132 should be a dashed line.

2. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

3. The specification is objected to because:

On page 1, the first and second sentences should be deleted. Note that the first sentence was added by preliminary amendment. Under the heading CROSS-REFERENCE TO RELATED APPLICATIONS, the following new sentence should be added: "This application is a division of U.S. Application No. 09/405,339, filed September 24, 1999, Patent No. 6,355,123, which is a continuation-in-part of U.S. Application No. 09/110,632, filed July 6, 1998, Patent No. 6,113,141."

At page 7, lines 4-5, "view, showing...airbag, of" should be "view of".

At page 9, line 9, "that" should be inserted after "132".

At page 10, lines 15-16, "defined by defined by" should be "defined by".

At page 11, line 17, "row" should be "line". Note that a "row" is normally straight.

At page 11, line 18, "155" should be "150".

At page 12, line 6, "150" should be "145".

At page 12, line 7, "20" should be "20'".

Appropriate correction is required.

Claim Objections

4. Claims 1-10 are objected to because of the following informalities:

In claims 1 and 3, at line 8, "bag" should be "airbag".

In claim 5, at line 7, "width said" should be "width, said".

In claim 8, at line 3, "pre-selected" should be "preselected".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1 and 3, at lines 3 and 5, and in claim 5, at lines 2 and 3, the term "a...supported fabric" is indefinite because it is unclear what it means for a fabric to be "supported". What is it supported by? The examiner suggests that "supported" be deleted at the following locations:

- Claim 1, lines 3, 5, 6, 7, 14 and 15.
- Claim 2, lines 3, 5 and 6.
- Claim 3, lines 3, 5, 6, 7, 13, 14, 18, 19 and 20.
- Claim 4, lines 3 and 4.
- Claim 5, lines 2, 3, 4, and 5.

Claim 5 is indefinite because it contradicts claim 4 from which it depends. Claims 4 and 5 are drawn to two different embodiments of the tether. The examiner suggests: in claim 5, at line 1, change "4" to "3".

In claim 10, at lines 1-2, the term "said elongated region of securement" lacks proper antecedent basis. Note that this term is introduced in claim 7.

In claim 10, at lines 6 and 8, the phrase "curved row" is indefinite because a row is normally straight. The examiner suggests: at lines 6 and 8, change "row" to "line".

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Kokaguchi et al. (EP 0485599). Kokaguchi et al. discloses an airbag 1 comprising first and second fabric panels 2, 3. An inflator port 4 is formed in the panel 3. The outer peripheral edges of the panels 2, 3 are bonded together by thermal welding (see page 3, line 43). A reinforcing securement member 9 has upper and lower portions (see Fig. 2) bonded to the panels 2, 3 by thermal welding (see page 3, lines 43-45). The airbag 1 is considered to be a “roll-over” airbag because it is capable of providing at least some degree of protection during a roll-over.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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10. Claims 2, 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kokaguchi et al. (EP 0485599) in view of Ronn et al. (DE 2552815) and Takahashi et al. (JP 06016099). Kokaguchi et al. lacks a tether bonded to the first and second panels. Ronn et al. teaches a tether 2 bonded to first and second panels 4, 5. As shown in Fig. 3, the tether includes first and second panel members 10, 12 bonded to each other and to the airbag panel 9 by a bonding agent 11, 14, 15. Takahashi et al. also teaches a two-piece tether 7, 8 bonded to first and second panels 3, 4 by a bonding agent (see the abstract). From this teaching of Ronn et al. and Takahashi et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kokaguchi et al. by providing the airbag with a tether bonded to the first and second panels because a tether serves to control the inflated shape and location of the airbag, thereby improving the protection provided by the airbag.

11. Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kokaguchi et al. in view of Ronn et al. and Takahashi et al. as applied to claim 6 above, and further in view of Toru (JP 05016751). The Kokaguchi et al., Ronn et al. and Takahashi et al. combination lacks first and second tether panel members secured by an elongated region of stitching. Toru teaches first and second tether panel members 15a, 15b secured by an elongated region of stitching 14 (see Fig. 4). Toru further teaches that this tether construction is advantageous because "the air bag can be folded up compactly, and installation work of the tethers...becomes also easy" (see the last sentence of the abstract). From this teaching of Toru, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Kokaguchi et al. by forming the tethers of first and second tether panel members secured by an elongated region of stitching because this facilitates folding of the airbag and installation of the tethers.

Double Patenting

12. Applicant is advised that should claim 3 be found allowable, claim 2 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

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13. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

14. Claims 4 and 5 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 6,113,141. Although the conflicting claims are not identical, they are not patentably distinct from each other because a modification involving the mere elimination of an element/limitation with the consequent loss of its function is generally recognized to be within the level of ordinary skill in the art.

Allowable Subject Matter

15. Claims 4 and 5 would be allowable if (1) these claims are rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims, and (2) a terminal disclaimer is filed to overcome the double patenting rejection.

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16. Claims 8 and 10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.


Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. JP 01122751 teaches an airbag with bonded panels and bonded tethers. JP09226498 teaches a low-profile tether. Wipasuramonton et al. teaches an airbag with a passageway for a seat belt.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter C. English whose telephone number is 703-308-1377. The examiner can normally be reached on Monday through Thursday (7:00 AM - 5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul N. Dickson can be reached on 703-308-2089. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.


Peter C. English
Primary Examiner
Art Unit 3616
9/22/03

pe
22 September 2003